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November 23, 2015

**By ECF**

United States Court of Appeals  
Second Circuit  
Thurgood Marshal U.S. Courthouse  
40 Foley Square  
New York, New York 10007

Re: In Re: McCray, Richardson, San  
15-1887-cv

On August 25, 2015 this Court so-ordered a briefing schedule requiring Appellee's brief be filed by November 17, 2015; that November 17<sup>th</sup> deadline, 90 days after the August 18, 2015 filing of Appellant's brief, was requested by Appellee.

On October 22, 2015, Appellee instead filed a motion to dismiss the appeal; Appellant filed OPPOSITION to that motion on October 29, 2015 and Appellee filed REPLY on November 4, 2015. The Court has not ruled on Appellee's motion.

Appellee's motion to dismiss notably did not request any extension of the November 17, 2015 briefing deadline, and in any event, it is well settled that the mere request for an extension of the deadline would not have effectuated an extension. USA v. Raimondi, 760 F.2d 460, 462 (2d Cir. 1985); RLI Insurance Co. v. JDJ Marine, Inc., 716 F.3d 41, 43-44 (2d Cir. 2013).

Second Circuit  
November 23, 2015  
Page 2

By not filing its brief on November 17, 2015 as earlier so-ordered, Appellee has forfeited its privilege to be heard at oral argument in this Court, see SUMMARY ORDER in Reid v. City of New York, 212 Fed.Appx. 10 (2d Cir. 2006); or as prevailing in State Court practice, see Ameral v. Johnson, 194 A.D.2d 976, 599 N.Y.S.2d 332, 333 (3rd Dept. 1993) (“plaintiff has neither filed a responding brief nor advised this court of her intention to proceed on the record. ... We deem plaintiff’s actions in this regard to be a concession that the relief sought on appeal should be granted”).

In the premises, Appellant hereby waives oral argument and request that this appeal be assigned for disposition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Stewart', with a long horizontal stroke extending to the right.

Gareth W. Stewart

cc: James R. DeVita (via email & ECF)

Circuit Notice 4